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From: "Lendrum, Jacqueline M (DEC)" <jacqueline.lendrum@dec.ny.gov>
Date: December 7, 2016 at 9:58:40 AM EST
To: "Arcaya, Alyssa" <arcaya.alyssa@epa.gov>
Subject: RE: CWA CAFO GP language revisions

We aren't using the word "automatic" anywhere. 60 days is a reasonable amount of time for us to complete this review and if we need more time, we'll take it. What if we send the facility an acknowledgement letter like we do in the Constr. GP, would that satisfy your concern?

750-1.21 language – it says "may" but isn't prescriptive about how we do that.

d) Administration of general permits.

General permits may be issued, modified, and reissued, or terminated in accordance with applicable requirements of this Part and Part 621 of this Title, except:

(1) to obtain permission to discharge in accordance with a general permit, an existing or proposed discharger must timely notify the department, in the format provided by the department, of the discharger's intention to discharge in accordance with a general permit. **The department may provide verification of discharge approval pursuant to the general permit and may require such verification prior to the permittee being authorized to discharge;**

Also, we added EPA to the inspection and entry provision as you requested.

Please give me a call to discuss. Our attorneys are scrambling to settling this today before we brief at 3 – we meet with them at 11 – if you agree with what I describe above please let me know asap.

From: Arcaya, Alyssa [<mailto:arcaya.alyssa@epa.gov>]
Sent: Tuesday, December 06, 2016 3:56 PM
To: Lendrum, Jacqueline M (DEC) <jacqueline.lendrum@dec.ny.gov>
Subject: RE: CWA CAFO GP language revisions

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Hi Jackie,

To clarify, it's not the 60-day deadline that's the issue, but rather the automatic coverage. DEC must affirmatively approve coverage before it can become effective. If

a self-imposed deadline makes it difficult to review and affirmatively approve the NOI/ANMP submissions, automatic coverage still can't be granted. If, instead, the 60-day deadline is an expected timeline for affirmative approval that you include to introduce some predictability and transparency in the permitting process, we wouldn't have an issue with that.

Does that help?

Thanks,

Alyssa

From: Lendrum, Jacqueline M (DEC) [<mailto:jacqueline.lendrum@dec.ny.gov>]

Sent: Tuesday, December 06, 2016 3:28 PM

To: Arcaya, Alyssa <arcaya.alyssa@epa.gov>

Subject: RE: CWA CAFO GP language revisions

Importance: High

Alyssa,

Where is the legal reference that the 60-day self-imposed deadline is inconsistent with the CWA?

"Furthermore, we're concerned that the self-imposed 60-day deadline (and automatic coverage thereafter) is inconsistent with the requirement that DEC review, amend as necessary, and affirmatively approve coverage before it can become effective. We think that this provision (the 60-day deadline followed by automatic coverage) must be removed."

From: Arcaya, Alyssa [<mailto:arcaya.alyssa@epa.gov>]

Sent: Tuesday, December 06, 2016 3:06 PM

To: Latessa, Sara H (DEC) <Sara.Latessa@dec.ny.gov>; Lendrum, Jacqueline M (DEC) <jacqueline.lendrum@dec.ny.gov>

Cc: Saporita, Chris <Saporita.Chris@epa.gov>; Coats, Andrea

<Coats.Andrea@epa.gov>; Arvizu, Christy <Arvizu.Christy@epa.gov>

Subject: FW: CWA CAFO GP language revisions

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Hello Jackie and Sara,

After a conversation with Jackie yesterday afternoon, I wanted to provide some clarifications to the comments Andrea sent yesterday.

The first issue concerned the submission of a farm-specific ANMP and NOI for permit coverage. The language below is currently found in the fact sheet. We had discussed the need to have this language in the permit as well.

The farm-specific ANMP must be submitted with the Notice of Intent for coverage under this permit and the availability of both will be publically noticed and comments received for 30 days. Upon submission of the ANMP and NOI, the Department will have 60 days to review the documents in order to ensure compliance with permit requirements and will notify the applicant if changes are needed. If, at any time throughout the permit term, the individual farm proposes an action that does not meet NRCS standards (ie. the effluent limitations established in the permits) then a revised ANMP must be submitted, made available to the public for comment and an opportunity for hearing provided. Part IV.F. of the permit describes these actions that warrant submission of a revised ANMP.

The second issue regarded Inspection and Entry language referenced in 40 CFR 122.41(i), which you had removed under advice from your legal team and which you explained to us was a department-wide decision that affected all general permits. Jackie had asked for citations that showed that this language had to be reflected in the permit itself. 40 CFR 122.41, which applies to both the NOI submission and Inspection and Entry requirements reads (emphasis mine):

“The following conditions apply to all NPDES permits. Additional conditions applicable to NPDES permits are in §122.42. All conditions applicable to NPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations (or the corresponding approved State regulations) must be given in the permit.”

With regard to fact sheets vs. permit language, 40 C.F.R. 124.8 explains that fact sheets are required to accompany most draft permits (including general permits), to explain the basis of choosing the limits in the permit, in the event that there is any confusion about the meaning of a permit term, and to substantiate the record basis for the limits chosen. Fact sheets are not directly enforceable as permit conditions, which is why we need these requirements reflected in the permit itself. Furthermore, we’re concerned that the self-imposed 60-day deadline (and automatic coverage thereafter) is inconsistent with the requirement that DEC review, amend as necessary, and affirmatively approve coverage before it can become effective. We think that this provision (the 60-day deadline followed by automatic coverage) must be removed. We also did a quick review of some other current general permits issued by the NYSDEC. In addition to the draft MS4 general permit, the current Multi-Sector General Permit and Construction General Permit also include this language. I recognize that these permits are issued by a different bureau at NYSDEC, but all are NPDES general permits.

We realize that you have a series of briefings set up for this permit, but feel these issues need to be addressed before the permit is issued. We also realize that you have received conflicting guidance from your legal team, but we feel that the federal regulations are clear in both regards. If it would be helpful, we’d be happy to set up a conversation between your attorneys and ours.

I’m in meetings until 4pm, but will be around to speak afterwards.

Thanks,

Alyssa

Alyssa Arcaya
Acting Chief, Clean Water Regulatory Branch
Clean Water Division, EPA Region 2
212-637-3730

From: Coats, Andrea

Sent: Monday, December 05, 2016 12:28 PM

To: Latessa, Sara H (DEC) <Sara.Latessa@dec.ny.gov>

Cc: Arcaya, Alyssa <arcaya.alyssa@epa.gov>; Arvizu, Christy <Arvizu.Christy@epa.gov>; Saporita, Chris <Saporita.Chris@epa.gov>; Lendrum, Jacqueline M (DEC) <jacqueline.lendrum@dec.ny.gov>

Subject: Fw: CWA CAFO GP language revisions

Hello Sara,

Describing the permit review process does not satisfy the requirements as outlined in the CAFO regulations. Please see

EPA's comments, specifically 12, 14, 15, 16, 17, 19, 20, 21, 23, and 27. In addition, since the CAFO permit is an unique type of permit, the requirements cannot be compared to other permits. The permit must comply with the CAFO regulations.

EPA would also like to note that the language in the CAFO permit regarding Inspection and Entry should be consistent with that of the MS4 permit which includes EPA's rights. We had discussed this issue at one of our meetings and DEC assured EPA that it was consistent, however, upon review of the draft MS4 permit by EPA, the boilerplate language which outlines EPA's rights has been included and is consistent with previous permits. Therefore, the boilerplate language must be put in place in the CAFO permit.

See below:

Citation from the draft MS4 permit (Part X.P) – see p. 129

P. Inspection and Entry

- 1. The MS4 Operator shall allow the Commissioner of NYSDEC, the Regional Administrator of the USEPA, the applicable county health department, or their authorized representatives, upon the presentation of credentials and other documents as may be required by law, to:*
- 2. Enter upon the MS4 Operator's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this SPDES general permit;*
- 3. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit, including records required to be maintained for purposes of operation and maintenance; and*
- 4. Inspect at reasonable times any facilities or equipment (including monitoring and control.*

We look forward to hearing from you shortly.

Andrea

From: Latessa, Sara H (DEC) <Sara.Latessa@dec.ny.gov>

Sent: Thursday, December 1, 2016 2:19 PM

To: Coats, Andrea; Arvizu, Christy; Arcaya, Alyssa

Cc: Lendrum, Jacqueline M (DEC)

Subject: RE: CWA CAFO GP language revisions

Hi Andrea,

We believe describing the permit review process in the Fact Sheet meets the UPA. Can you direct us on where it doesn't? These processes are not specifically outlined in any SPDES permit (General or Individual), so we're not sure why EPA is requiring it here.

Thanks,

Sara

Sara H. Latessa


Environmental Program Specialist, Division of Water

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From: Coats, Andrea [<mailto:Coats.Andrea@epa.gov>]

Sent: Thursday, December 01, 2016 11:09 AM

To: Latessa, Sara H (DEC) <Sara.Latessa@dec.ny.gov>; Arvizu, Christy

<Arvizu.Christy@epa.gov>; Arcaya, Alyssa <arcaya.alyssa@epa.gov>

Cc: Lendrum, Jacqueline M (DEC) <jacqueline.lendrum@dec.ny.gov>

Subject: Re: CWA CAFO GP language revisions

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Hi Sara,

Hope you had a pleasant Thanksgiving.

I am following up with you to see if there was any progress made on the outstanding item above regarding language in the fact sheet versus having the language in the permit itself. Let me know if you have any questions.

Thank you,

Andrea

From: Coats, Andrea

Sent: Tuesday, November 8, 2016 12:12:08 PM

To: Latessa, Sara H (DEC); Arvizu, Christy; Arcaya, Alyssa

Cc: Lendrum, Jacqueline M (DEC)

Subject: Re: CWA CAFO GP language revisions

Sara,

Unfortunately, the language included in the Fact Sheet only does not satisfy EPA's concerns. EPA is almost certain that we stated that the language must be in the permit itself at the meeting. This was one of the items that you needed to discuss with your attorney's. EPA looks forward to hearing from you.

Andrea

From: Latessa, Sara H (DEC) <Sara.Latessa@dec.ny.gov>

Sent: Tuesday, November 8, 2016 7:59:17 AM

To: Coats, Andrea; Arvizu, Christy; Arcaya, Alyssa

Cc: Lendrum, Jacqueline M (DEC)

Subject: RE: CWA CAFO GP language revisions

Hi Andrea,

As I recall at the meeting, we agreed to discuss DEC's permit review process in the Fact Sheet and not in the permit itself. As such, the fact sheet was modified as follows: The farm-specific ANMP must be submitted with the Notice of Intent for coverage under this permit and the availability of both will be publically noticed and comments received for 30 days. **Upon submission of the ANMP and NOI, the Department will have 60 days to review the documents in order to ensure compliance with permit requirements and will notify the applicant if changes are needed.** If, at any time throughout the permit term, the individual farm proposes an action that does not meet NRCS standards (ie. the effluent limitations established in the permits) then a revised ANMP must be submitted, made available to the public for comment and an opportunity for hearing provided. Part IV.F. of the permit describes these actions that warrant submission of a revised ANMP.

The NOI and ANMP will be reviewed by DEC and the public within the 60 days discussed in the permit. If the applicant does not hear from the Department, than coverage is granted at the end of the 60 day period. Does this satisfy your concern?



Also, we do not have a set date for releasing the finalized permits as of yet.

-Sara

Sara H. Latessa

Environmental Program Specialist, Division of Water

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From: Coats, Andrea [<mailto:Coats.Andrea@epa.gov>]
Sent: Thursday, November 03, 2016 4:59 PM
To: Latessa, Sara H (DEC) <Sara.Latessa@dec.ny.gov>; Arvizu, Christy <Arvizu.Christy@epa.gov>; Arcaya, Alyssa <arcaya.alyssa@epa.gov>
Cc: Lendrum, Jacqueline M (DEC) <jacqueline.lendrum@dec.ny.gov>
Subject: Re: CWA CAFO GP language revisions

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Sara,

The changes as presented below are acceptable to EPA. In addition, there are no additional comments on the record keeping checklist or crosswalk. However, EPA is still concerned with language relating to comment 19. The language has not been revised such that it does not appear that coverage is granted automatically. Please note that we had discussed revisions at our meeting. Details below:

Part II (e.g. A.1: "Coverage under this general permit will begin 60 calendar days after the Department receives completed versions of the above documents, unless otherwise notified by the Department."). NYSDEC agreed to review every permit before that (and other similar) deadlines in Part II. As written the permit language is missing the (1) initial review, followed by (2) proposed acceptance/public notice, followed by (3) the affirmative approval, required under 40 C.F.R. 122.23(h)(1):

".... If the Director makes a preliminary determination that the notice of intent meets the requirements of §§ 122.21(i)(1) and 122.42(e), the Director must notify the public of the Director's proposal to grant coverage under the permit to the CAFO and make available for public review and comment the notice of intent submitted by the CAFO, including the CAFO's nutrient management plan, and the draft terms of the nutrient management plan to be incorporated into the permit....

The Director shall notify the CAFO owner or operator and inform the public that coverage has been authorized and of the terms of the nutrient management plan incorporated as terms and conditions of the permit applicable to the CAFO."

We look forward to hearing from you regarding Part II A.1.

Andrea

PS. Do you have a set date for issuing the permits final? At the last meeting you all had mentioned the end of December.

From: Coats, Andrea
Sent: Wednesday, November 2, 2016 1:51 PM
To: Latessa, Sara H (DEC); Arvizu, Christy; Arcaya, Alyssa
Cc: Lendrum, Jacqueline M (DEC)
Subject: Re: CWA CAFO GP language revisions

Sara,

Sure. We will be finishing up our review this week.

Andrea

From: Latessa, Sara H (DEC) <Sara.Latessa@dec.ny.gov>
Sent: Wednesday, November 2, 2016 1:24:20 PM
To: Arvizu, Christy; Arcaya, Alyssa; Coats, Andrea
Cc: Lendrum, Jacqueline M (DEC)
Subject: RE: CWA CAFO GP language revisions

Andrea,

Have you guys had a chance to review the revisions to the GP and the Fact Sheet? Any chance you could let me know EPA's thoughts by next Tuesday (11/8)? We are submitting the revised permits to legal for their review and they would like to know where EPA stands...

Thank you,

Sara

Sara H. Latessa


Environmental Program Specialist, Division of Water

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From: Latessa, Sara H (DEC)

Sent: Wednesday, October 26, 2016 9:45 AM

To: Arvizu, Christy <Arvizu.Christy@epa.gov>; Arcaya, Alyssa

<arcaya.alyssa@epa.gov>; 'Coats, Andrea' <Coats.Andrea@epa.gov>

Cc: Lendrum, Jacqueline M (DEC) <jacqueline.lendrum@dec.ny.gov>

Subject: CWA CAFO GP language revisions

As requested by EPA, the following highlighted language has been changed or modified:

Re: Comment 4:

“Wet Weather Standard Operating Procedures are those management strategies determined by the planner and employed by the facility to prevent discharges to *surface waters of the State* up to, and including, the 100-year, 24-hour storm event. **These procedures must be developed following a site evaluation done in accordance with 40 CFR 412.46(a)(1).** Overflows from practices other than waste storage structures, which are designed, operated and maintained to the 25-year, 24-hour storm, that do not result in a discharge to the *surface waters of the State*, are not considered to be violations of this permit. When determining wet weather management strategies, the planner should consider the risks associated with the site layout and protection needed on an individual basis. These procedures could include enhanced operating and maintenance schedules, additional clean water diversion techniques during high flow events, increased containment/freeboard, extended weather forecast considerations, emergency spreading procedures, or re-routing of BMP overflow paths during high flow events. **These procedures must include the “additional measures” contained in 40 CFR 412.37(a).**”

Re: Comment 39

“...all required structural BMPs must be implemented **as soon as possible**, but not to extend beyond 24 months of the acquisition. Upon completion of the above, the owner/operator must submit to the Department a certification that all required practices

identified in the CNMP have been fully implemented.”

Re: Comment 59:

Removed the authorization to discharge NCCW to Trout Waters in this permit.

Re: Comment 111:

“Animal Feeding Operation (AFO) means a lot or facility (other than an aquatic animal production facility) where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and **the lot or facility** does not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season. Two or more animal feeding operations under common ownership are a single animal feeding operation if they physically adjoin each other, or if they use a common area or system for the disposal of wastes. “

Re: Comment 112:

Common Ownership / Common Facility means that two or more Animal Feeding Operations are considered one operation if they (1) adjoin each other, including facilities that are separated by a right-of-way or public road, (2) if they use a common manure and wastewater storage and handling system, (3) if they use a common land application area, or (4) if they use a shared feed storage area that is under the control of a CAFO. Operations sharing application **equipment** that do not result in mixing of nutrients are not, by virtue of such sharing, a common facility, or under common ownership.

Also changed “vegetative” back to “vegetated” throughout document to be consistent with the NRCS Standard.

Because we haven’t received additional comments regarding the Recordkeeping Checklist or our Crosswalk between 590, ANMP, and 122.42(d)(5), we believe we have satisfied comments related to both.

Please let us know if the revised language now satisfies EPAs comments regarding the CWA GP?

Thank you all for working with us through this process! Looking forward to having new permits issued ASAP.

-Sara

Sara H. Latessa

Environmental Program Specialist, Division of Water

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